

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JERRY MCCALL,
Plaintiff,

VS.

CACH, LLC,
Defendant.

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Case No. 4:13cv531

REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

In its September 18, 2013 Order, the Court denied Plaintiff's motion to proceed in forma pauperis without prejudice to specifying details of certain income. *See* Dkt. 4. The Order notified him that failure to refile an amended motion or pay all filing fees within 30 days would result in dismissal of his suit. Now, more than three months after the Court's deadline, Plaintiff has taken no action in the case and there has been nothing filed. The Court finds that the case should be dismissed for want of prosecution. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) ("A district court *sua sponte* may dismiss an action for failure to prosecute or to comply with any court order.").

Plaintiff's complaint not having been served within 120 days of filing, the Court further finds that dismissal pursuant to Federal Rule of Civil Procedure 4(m) is appropriate. *See* FED. R. CIV. P. 4(m) ("If a defendant is not served within 120 days after the complaint is filed, the court – on motion or on its own after notice to the plaintiff – must dismiss the action without prejudice against that defendant or order that service be made within a specified time.").

For these reasons, the Court finds that Plaintiff's claims should be dismissed without prejudice and this matter closed on the Court's docket.

Within fourteen (14) days after service of the magistrate judge's report, any party may serve and file written objections to the findings and recommendations of the magistrate judge. 28 U.S.C.A. § 636(b)(1)(C).

A party is entitled to a *de novo* review by the district court of the findings and conclusions contained in this report only if specific objections are made, and failure to timely file written objections to any proposed findings, conclusions, and recommendations contained in this report shall bar an aggrieved party from appellate review of those factual findings and legal conclusions accepted by the district court, except on grounds of plain error, provided that the party has been served with notice that such consequences will result from a failure to object. *Id.*; *Thomas v. Arn*, 474 U.S. 140, 148 (1985); *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), *superseded by statute on other grounds*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

SIGNED this 3rd day of February, 2014.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE